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SENATE

REPORT
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EXCHANGE OF LANDS IN CAPE KRUSENSTERN NATIONAL MONUMENT, ALASKA

JUNE 27 (legislative day, JUNE 26), 1985.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 444]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 444) to amend the Alaska Native Claims Settlement Act, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

On page 1, line 4, strike "(43 U.S.C. 1601, et seq.) is amended" and insert in lieu thereof: "(85 Stat. 688, 43 U.S.C. 1601-28), as amended, is further amended".

PURPOSE OF THE MEASURE

S. 444, as reported, would confirm and ratify a land exchange between NANA Regional Corporation, Inc. [NANA] and the United States through the Secretary of the Interior for lands within Cape Krusenstern National Monument in Alaska.

BACKGROUND AND NEED

The NANA Regional Corporation, Inc. [NANA] (the regional native corporation for Northwest Alaska) has proposed to the National Park Service [NPS] a land exchange within the Cape Krusenstern National Monument (monument). NANA owns a major

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lead-zinc-silver deposit (Red Dog) northeast of the monument. NANA and COMINCO Alaska, a mining corporation partner, are in the process of developing the Red Dog Mine and wish to construct a road from the mine site across the northwestern corner of the monument to a port site on NANA owned land within the northwest corner of the monument. This routing was determined to be environmentally preferred as well as economically acceptable in a September 1984 environmental impact statement for the Red Dog Mine project. As a result of the proposed land exchange, NANA would own all of the land within the monument that the mine access road would cross. While this would not free COMINCO from the necessity of obtaining Federal and State regulatory permits to build the road, it would not have to obtain a right-of-way permit to cross National Park System lands.

Title XI of the Alaska National Interest Lands Conservation Act [ANILCA] provides a procedure for obtaining Congressional approval for rights-of-way across conservation units in Alaska when the administering agency lacks the necessary authority. Although an application for a right-of-way across the monument has been submitted, no action has been taken by the Department on this application.

LAND STATUS AND NATIONAL PARK SERVICE LAND PROTECTION OPTIONS

NANA owns or has conveyance rights to approximately 195,643 acres of land, in three sectors, within the monument acquired under provisions of the Alaska Native Claims Settlement Act [ANCSA]. The NPS feels that this distribution of inholdings in the monument impairs management of the unit. While some of the selected acreage will exceed NANA's acreage entitlements under the ANCSA and will eventually be relinquished, it is anticipated that substantial acreage will remain held by NANA.

Land protection planning by the NPS for the monument has identified five options with respect to NANA's lands and interests: (1) Do nothing; (2) negotiate a cooperative agreement; (3) acquire conservation easements; (4) rely on other laws or regulations for protection; or (5) acquire fee title by donations, purchase or exchange.

A proposed exchange would normally attempt to remove the non-Federal interests to outside a park and preferably use public domain lands outside the park as the payment. However, two factors affect the situation at Cape Krusenstern. One, public domain lands outside of the monument with attractive resource values are not readily available for exchange within the region. Two, the present incentive for NANA to enter into an exchange is to secure lands in the monument which the Red Dog Mine Road would cross.

DESCRIPTION OF LAND EXCHANGE PROPOSAL

The proposed land exchange consists of the following major provisions:

1. A consolidation of land ownership into contiguous patterns that would provide administrative and resource management benefits to the United States and provide NANA with a block of land meeting its needs.

2. NANA would receive: (a) Title to approximately 62,084 acres of Federal lands within the monument and 600 acres of limited subsurface estate concentrating its holdings at the northwestern and southeastern corners of the monument; (b) easements for two winter use trails between Kivalina and Noatak across the monument and other Federal lands; and (c) title to approximately 1,915.25 acres outside the monument. NANA would also take conveyance to 31,884.67 acres of lands in the northwest corner of the monument to which it already has vested rights pursuant to ANCSA.

3. The United States would receive from NANA:

a. Conveyance of 1,345 acres of coastal land and relinquishment of selections and selection rights to approximately 103,338 acres within the monument;

b. A grant in perpetuity of an easement and public use and occupancy rights for a 5-acre administrative tract at the Onion Portage Archeological District at Kobuk Valley National Park;

c. Equitable servitudes and conservation easements for the protection and study of resource values on 10,942 acres of land near Sheshalik—an important cultural resource area;

d. Interests and easements for the protection and study of resource values within the 65,274 acre block which would be crossed by the Red Dog Mine Road; and

e. Trail easements providing for public access across NANA lands to Monument lands.

BASIS FOR EXCHANGE

Appraisals were made of the surface and subsurface estates of the lands proposed for exchange. Major land elements of the exchange were determined to have comparable values. While the proposed agreement is basically for exchange of comparable land values, there are benefits, interests and concerns of speculative value that suggest the exchange be based on a determination that it is in the public interest. A summary of appraised land values and other values below shows the values received by each party:

NANA—VALUE RECEIVED

Unit	Acreage	Value	
A(1) lands	62,084	$3,725,000	Land available to NANA only by exchange.
A(4) lands	1,915.25	115,000	Lands to be received by NANA outside the Monument in lieu of B(3) lands conveyed to United States.
A(5) interests	[1] 100,000 to 500,000	[2] 50,000 to 250,000	600 acres of limited subsurface estate available only by exchange.
Total value to NANA		3,990,000	

[1] Cubic yards of stone, rock, et cetera.
[2] $150,000 average.

This value is discounted by the servitudes, easements and covenants running with the A(1), A(2), A(5) and B(4) lands which place certain restrictions on the lands and provide for protection and study of cultural and natural resources on these NANA lands.

UNITED STATES—VALUE RECEIVED

Unit	Acreage	Value	
B(1) lands (12(c))	64,974	$3,898,400	NANA charged 64,894 acres against 12(c) entitlement.
B(2) lands	640		Relinquished by NANA.
B(3) lands	1,345	297,800	Owned by NANA and conveyed to United States.
B(6) easement	5	[1] 20,000	Administrative site easement in perpetuity.
Total value to United States.		4,216,200	

[1] Estimate.

Other values to United States:

Administrative and resource management benefits of land consolidation.

Reduced survey costs up to $200,000.

Administrative costs savings due to fixed acreage charges rather than precisely calculated acreages.

Charges against entitlement exceed acreage exchanged. NANA loses 1,223.75 acres of entitlement.

The National Park Service and the Bureau of Land Management support the exchange. The NPS believes this exchange is the most effective solution available now in the foreseeable future: To enhance land and resource ownership patterns and management and resource protection capabilities in the monument; to receive significant value in return for NANA's ability to construct the Red Dog Mine transportation system along a preferred route across lands that would be owned by them; to gain a greater level of protection for cultural and natural resources on the major non-Federal holdings within the monument; to limit the conveyance of further valid land sections to NANA within the monument; to consolidate to the extent possible non-Federal lands in areas of lesser significance to the integrity and purposes of the monument and where development opportunities appear limited; to place into private ownership lands for which the owner has a reasonable degree of mutual interest in maintaining the values of the land for wildlife and subsistence activities; to gain the right of use of an administrative site in important privately owned lands at Kobuk Valley National Park; to enhance NANA's ability to develop the Red Dog Mine and to enjoy the benefits sought and conferred by ANCSA; and to generally further the purposes of the monument.

The BLM supports the exchange as several general benefits to the public are derived. NANA agrees not to challenge the use by the United States of sand and gravel under any easement reserved pursuant to section 17(b) of ANCSA and NANA lands, if the sand and the gravel is used for the purposes of developing or maintaining the easement. The exchange establishes two comprehensive trail easements for access across Native lands to Federal lands which otherwise would be identified and reserved in a piecemeal fashion at greater expense. Acreage to be conveyed and counted toward entitlement has been reduced to a firm number which reduces basis conveyance costs. Moreover, survey costs will be reduced by restricting surveys to the perimeter only of consolidated land groups.

Concerns Regarding Land Exchanges and Title XI of ANILCA

The Committee strongly feels that exchange is an important tool for the acquisition of private lands inside units of the National Park System. However, the Committee notes that the acquisition of private lands inside national parks and monuments through the exchange of other park lands is unique to Alaska. In general, Federal lands within national parks and monuments cannot be sold, exchanged, or otherwise alienated. In fact, the Committee is unaware of any instance where such alienation has taken place outside of Alaska.

In enacting the Alaska National Interest Lands Conservation Act of 1980, the Congress expressly gave the Secretary the authority to use park lands to acquire other park lands under certain terms and conditions. The Committee took this action in 1980 in light of the unique circumstances in Alaska and has no intention of expanding such authority beyond the authority of section 5 of Public Law 90-402 to the other 49 States or viewing S. 444 as a precedent for such authority.

The Chairman and the ranking member of the Committee have sent the following letter to the Secretary of the Interior expressing the Committee's desire that the Department of the Interior promptly implement the provisions of title XI of ANILCA.

U.S. Senate,
Committee on Energy
and Natural Resources,
Washington, DC, June 26, 1985.

Hon. Donald Paul Hodel,
Secretary, Department of the Interior,
Washington, DC. 20240

Dear Mr. Secretary: On December 2, 1980, the Alaska National Interest Lands Conservation Act [ANILCA] was signed into law, culminating a ten-year effort by this Committee and many others to provide for the designation and conservation of certain public lands in the State of Alaska and to further the implementation of the Alaska Native Claims Settlement Act and the Alaska Statehood Act.

Title XI of ANILCA was included in this landmark legislation to provide a method by which transportation systems could be located across conservation system units in Alaska. Specifically, Congress found that:

(a) Alaska's transportation and utility network is largely undeveloped and the future needs for transportation and utility systems in Alaska would best be identified and provided for through an orderly, continuous decisionmaking process involving the State and Federal Governments and the public;

(b) the existing authorities to approve or disapprove applications for transportation and utility systems through public lands in Alaska are diverse, dissimilar, and, in some cases, absent; and

(c) to minimize the adverse impacts of siting transportation and utility systems within units established or expanded by this Act and to insure the effectiveness of the decisionmaking process, a single comprehensive statutory authority for the ap-

proval or disapproval of applications for such systems must be provided in this Act.

The Senate Committee on Energy and Natural Resources recently reported a bill (S. 444) which would legislatively mandate a land exchange in the Cape Krusenstern National Monument between the Secretary and the NANA Regional Corporation. The purpose of the exchange (and the legislation) is to consolidate NANA's holdings in the Monument so that a road might be constructed across NANA's land in the northwest portion of Cape Krusenstern. During the discussion of this legislation, a number of Committee members expressed concern about using a land exchange to site and approve a transportation system route such as this rather than Title XI.

We are writing at the Committee's request to urge the Department of the Interior to expeditiously take the actions necessary to implement the provisions of Title XI. If the Department feels it is unable to implement the law as written, we would appreciate knowing of any amendments it believes necessary to make the process work. After four and a half years, it is not unreasonable to expect the implementation of these provisions of ANILCA.

We would appreciate your timely response to our request.

JAMES A. MCCLURE,
Chairman.

J. BENNETT JOHNSTON,
Ranking Minority Member.

LEGISLATIVE HISTORY

S. 444 was introduced on February 7, 1985 by Senators Murkowski and Stevens. A hearing before the Subcommittee on Public Lands, Reserved Water and Resource Conservation was held on April 29, 1985. The Administration, in testimony, supports enactment of S. 444.

At a business meeting on June 19, 1985, the Senate Committee on Energy and Natural Resources ordered S. 444, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 19, 1985, by a unanimous voice vote of a quorum present recommends that the Senate pass S. 444, if amended, as described herein.

COMMITTEE AMENDMENTS

The Committee made a technical amendment to include the statute citation of the Alaska Native Claims Settlement Act.

COST AND BUDGETARY CONSIDERATION

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 1985.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 444, a bill to amend the Alaska Native Claims Settlement Act, as ordered reported by the Senate Committee on Energy and Natural Resources, June 20, 1985. We estimate that no significant cost to federal, state or local governments would result from enactment of this bill. S. 444 would facilitate the exchange and consolidation of lands within the National Park Service's Cape Krusenstern National Monument.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 444. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 444 as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative reports received by the committee from the Department of the Interior setting forth executive agency recommendations relating to S. 444 are set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, June 26, 1985.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 444, a bill "To amend the Alaska Native Claims Settlement Act."

We strongly recommend the enactment of S. 444.

S. 444 would add a new section to the Alaska Native Claims Settlement Act [ANCSA]. The new section would direct the Secretary of the Interior to convey Federal lands and interests in lands to NANA Regional Corporation, Inc., in exchange for lands and interests in lands of NANA Regional Corporation. The terms of the ex-

change and the properties to be exchanged are set forth in an agreement between NANA and the United States dated January 31, 1985, which is referred to in the legislation. By its terms, the agreement would be effective upon enactment of legislation authorizing and ratifying the agreement. We view S. 444 as the necessary legislative authorization and, therefore, believe that it would effectively ratify the agreement.

The NANA Regional Corporation, Inc., has proposed to the National Park Service a land exchange within the Cape Krusenstern National Monument. NANA owns a major lead-zinc-silver deposit (Red Dog) northeast of the monument. NANA and Cominco Alaska, a mining corporation partner, are in the process of developing the Red Dog Mine and wish to construct a road from the mine site across the northwest corner of the monument to a port site on NANA-owned land within the northwest corner of the monument. This routing was determined to be environmentally preferred as well as economically acceptable in a September 1984 Environmental Impact Statement for the Red Dog Mine Project. As a result of the proposed land exchange, NANA would own all of the land within the monument that the mine access road would cross. While this would not free Cominco from the necessity of obtaining Federal and State regulatory permits to build the road, it would not have to obtain a right-of-way permit to cross National Park System lands.

Title XI of the Alaska National Interest Lands Conservation Act [ANILCA] provides a procedure for obtaining Congressional approval for rights-of-way across conservation units in Alaska when the administering agency lacks the necessary authority. This is an untested procedure, but an application for a right-of-way across the monument has been submitted and is being processed in case the proposed land exchange is not executed. The exchange would provide greater legal certainty to the development of the Red Dog Mine road and, it is believed, could be accomplished more expeditiously than the untested title XI process.

NANA owns or has conveyance rights to approximately 195,643 acres of land in three sectors within the monument under provisions of the Alaska Native Claims Settlement Act. This distribution of inholdings in the monument impairs management of the unit. While some of the selected acreage will exceed NANA's acreage entitlements and will eventually be relinquished, it is anticipated that substantial acreage will remain held by NANA.

The resulting exchange would not completely eliminate NANA's monument inholdings but would substantially reduce and consolidate its holdings into two areas. We are persuaded that there is much to be gained from executing the proposed land exchange now instead of waiting for resolution of the entire inholding question. Absent such an exchange, and if the Congress approved a right-of-way across the monument pursuant to title XI, the United States would receive only fair market rental for the right-of-way instead of thousands of acres of lands and interests in lands for addition to the National Park System.

Accordingly, for the past several months representatives of the Bureau of Land Management, National Park Service, and the Department have participated in negotiations with the NANA Re-

gional Corporation. This effort has resulted in a proposed land exchange which would be ratified by the enactment of S. 444.

In summary, the proposed land exchange would provide a net gain of 86,335 acres of lands and interests in lands to the United States, land which would be added to the National Park System. Specifically, the land exchange proposal consists of the following major provisions:

1. There would be a consolidation of land ownership into continguous patterns that would provide administrative and resource management benefits to the United States and provide NANA with a block of land meeting its needs.
2. NANA would receive:
   a. title to approximately 62,084 acres of Federal lands within the monument and 600 acres of limited subsurface estate concentrating its holdings at the northwest and southeast corners of the monument;
   b. easements for two winter use trails between Kivalina and Noatak across the monument and other Federal lands; and
   c. title to approximately 1,915.25 acres outside the monument. NANA would also take conveyance to 31,884.67 acres of lands in the northwest corner of the monument to which it already has vested rights under the Alaska Native Claims Settlement Act.
3. The United States would reveive from NANA:
   a. conveyance of 1,345 acres of coastal land and relinquishment of selections and selection rights to approximately 103,338 acres within the monument;
   b. a grant in perpetuity of an easement and public use and occupancy rights for a 5-acre administrative tract at Onion Portage Archeological District at Kobuk Valley National Park;
   c. equitable servitudes and conservation easements for the protection and study of resource values on 10,942 acres of land near Sheshalik, and important cultural resource area;
   d. interests and easements for the protection and study of resource values within the 65,274-acre block which would be crossed by the Red Dog Mine road, including protections which are essentially the same as would be attached to an approved title XI right-of-way; and
   e. trail easements providing for public access across NANA lands to monument lands.

Appraisals were made of the surface and subsurface estates of the lands proposed for exchange. Major land elements of the exchange were determined to have comparable values. While the proposed agreement would provide basically for exchange of comparable land values, there would be benefits, interests, and concerns of speculative value that suggest the exchange be based on a determination that it is in the public interest. We estimate that the value of the lands and interests that would be conveyed to NANA is approximately $3,990,000, and we estimate the value of the lands and interests that the United States would receive under the exchange is approximately $4,216,200.

The Department of the Interior supports the exchange and believes it would be the most effective solution available now and in the foreseeable future to: enhance land and resource ownership

patterns and management and resource protection capabilities in the monument; receive significant value in return for NANA's ability to construct the Red Dog Mine transportation system along a preferred route across lands that would be owned by NANA, instead of pursuant to a possible title XI right-of-way across monument lands with minimal benefits gained; gain a greater level of protection for cultural and natural resources on the major non-Federal holdings within the monument; limit the conveyance of further valid land selections to NANA within the monument; consolidate to the extent possible non-Federal lands in areas of lesser significance to the integrity and purposes of the monument and where development opportunities appear limited; place into private ownership lands for which the owner has a reasonable degree of mutual interest in maintaining the values of the land for wildlife and substance activities; gain a right of use of an administrative site in important privately owned lands of Kobuk Valley National Park; enhance NANA's ability to develop the Red Dog Mine and to enjoy the benefits sought and conferred by the Alaska Native Claims Settlement Act; and generally further the purposes of the monument.

We further support the exchange because several other benefits to the public are derived. NANA would agree not to challenge the use by the United States of sand and gravel under any easement reserved on NANA lands, if the sand and gravel is to be used for the purposes of developing or maintaining the easement. The exchange would establish two comprehensive trail easements for access across native lands to Federal lands which otherwise would be identified and reserved in a piecemeal fashion at greater expense. Acreage to be conveyed and counted towards entitlement would be reduced to a firm number, reducing basic conveyance costs. Moreover, survey costs would be reduced by restricting surveys to the perimeter of consolidated land groups.

We strongly recommend the enactment of S. 444 on the basis that it clearly in the public interest, that it promotes the purposes of ANILCA and of ANCSA, preserves the essential integrity and furthers the purposes of Cape Krusenstern National Monument, and does not significantly restrict subsistence uses and activities.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM P. HORN,
Deputy Under Secretary.

ADDITIONAL VIEWS OF SENATORS BUMPERS, METZENBAUM, BRADLEY, BINGAMAN, AND ROCKEFELLER

We supported S. 444 and voted to report the bill primarily because we do not wish to interfere with the NANA Corporation's desires to develop the Red Dog Mine, and because we were not convinced that the proposed transportation route through the Cape Krusenstern National Monument would be more environmentally damaging than alternative routes. But our approval of the bill should not be interpreted as establishing a precedent for authorizing land exchanges involving units of the National Park System in order to provide transportation rights-of-way, or for resolving problems of this type through legislation. We have serious reservations about the Department of the Interior's interpretation of its responsibility under the Alaska National Interest Lands Conservation Act [ANILCA] in this matter.

First, we object strongly to the Department's failure to make use of its authorities under title XI of ANILCA to evaluate granting a right-of-way across the monument. The Congress in 1980 anticipated that development near federally protected areas in Alaska would eventually require that they be crossed with transportation systems. Title XI was included in ANILCA specifically to provide a means for evaluating and either granting or not granting proposed rights-of-way. We cannot understand the Department's delays in promulgating regulations to implement title XI, or its preference for authorizing a transportation route across the monument through legislatively authorized land exchange. Unless it can convince the Committee that title XI is an inadequate or inappropriate approach to resolving right-of-way problems, we expect the Department to act expeditiously in implementing the law.

Second, we are troubled by the Department's failure to prepare an environmental impact statement for the land exchange which would be ratified by S. 444. We recognize that an EIS has been prepared for the proposed road through the monument as part of the evaluation of the Red Dog project itself. But that document does not address other environmental impacts which would result specifically from the land exchange, and which should be fully evaluated before such an exchange is approved. In our view, the National Environmental Policy Act requires that an EIS be prepared for the exchange, and section 902 of ANILCA does not exempt it.

One particular provision in the land exchange agreement also concerns us. We understand that the agreement includes reclamation requirements for the potentially damaging sand and gravel pits which will be associated with the road construction. One excavation site will be located near Mud Lake on Federal land that will remain within the monument. The Mud Lake area is particularly sensitive as it provides significant waterfowl nesting grounds. We expect the Secretary to ensure that these reclamation require-

ments provided in the agreement are vigorously enforced and the monument's scenic, cultural, and other values protected.

In short, while we are sympathetic to the situation addressed by S. 444, we do not believe that legislation of this type is the approprite solution for similar matters which may arise in the future. We will be hesitant, if not unwilling, to support such legislation.

DALE BUMPERS.
HOWARD M. METZENBAUM.
BILL BRADLEY.
JEFF BINGAMAN.
JOHN D. ROCKFELLER IV.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as ordered reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no charge is proposed is shown in roman):

PUBLIC LAW 92-203—DEC. 18, 1971

AN ACT To provide for the settlement of certain land claims of Alaska Natives, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Alaska Native Claims Settlement Act".

* * * * * * *

SEC. 42. The Secretary shall convey to NANA Regional Corporation, Incorporated, in accordance with the terms and conditions set forth in an agreement entitled "Terms and Conditions Governing Legislative Land Consolidation and Exchange between NANA Regional Corporation, Incorporated, and the United States," which was executed by the parties on January 31, 1985, land and interests in lands in exchange for lands and interests in lands of NANA Regional Corporation, Incorporated, upon fulfillment by NANA Regional Corporation, Incorporated, of its obligations under said agreement.

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